

EX PARTE OR LATE FILED  
COVINGTON & BURLING  
1201 PENNSYLVANIA AVENUE, N.W.  
P.O. BOX 7566  
WASHINGTON, D.C. 20044-7566  
(202) 662-6000

TELEFAX: (202) 662-6291  
TELEX: 89-593 (COVLING WSH)  
CABLE: COVLING

June 2, 1994

KURT A. WIMMER  
DIRECT DIAL NUMBER  
(202) 662-5278

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 2 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

RECONFIELD HOUSE  
CURZON STREET  
LONDON W1Y 8AS  
ENGLAND  
TELEPHONE: 071-495-5655  
TELEFAX: 071-495-3101  
BRUSSELS CORRESPONDENT OFFICE  
44 AVENUE DES ARTS  
BRUSSELS 1040 BELGIUM  
TELEPHONE: 32-2-512-9890  
TELEFAX: 32-2-502-1598

BY MESSENGER

Mr. William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Gen. Docket No. 90-314, PP Docket 93-253

Dear Mr. Caton:

Columbia PCS, Inc. ("Columbia"), pursuant to Section 1.1206(a)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(2) (1993), hereby notifies the Commission that a representative of Columbia met today with Chairman Reed E. Hundt and Karen Brinkmann, Esq., special assistant to the Chairman, and met yesterday with Commissioner Susan P. Ness, Gregory J. Vogt, Esq., senior legal advisor to Commissioner Ness, and Rosalind K. Allen, Esq., legal advisor to Commissioner Ness.

The matters discussed are contained in Columbia's written submissions on file with the Commission and are described in more detail in the attachment to this letter. In addition, the attachment has been distributed to the Commission personnel listed below.

Please direct any inquiries concerning this matter to the undersigned.

Very truly yours,

  
Kurt A. Wimmer

Attorney for Columbia  
PCS, Inc.

cc: Hon. Reed E. Hundt  
Rosalind K. Allen, Esq.  
Hon. James H. Quello  
Hon. Andrew C. Barrett  
Hon. Susan P. Ness  
Hon. Rachelle B. Chong

No. of Copies rec'd  
List ABCDE

0+2

COVINGTON & BURLING

Mr. William F. Caton  
June 2, 1994  
Page 2

William E. Kennard, Esq.  
Mr. Donald Gips  
Blair Levin, Esq.  
Karen Brinkmann, Esq.  
Byron F. Marchant, Esq.  
Rudolfo Lujan Baca, Esq.  
Jane E. Mago, Esq.  
Richard K. Welch, Esq.  
Gregory J. Vogt, Esq.  
Jill Lockett, Esq.  
Dr. Thomas P. Stanley  
David R. Siddall, Esq.  
Dr. Robert M. Pepper  
Mr. John R. Williams  
Dr. Evan R. Kwerel  
Peter A. Tenhula, Esq.  
Mr. Richard A. Metzger, Jr.  
Mr. Gerald P. Vaughn  
Mr. Ralph A. Haller

June 2, 1994

### **AN "ENTREPRENEURIAL BAND" CAN FOSTER FULL DESIGNATED ENTITY PARTICIPATION IN PCS**

A set-aside block for small businesses, woman- and minority-owned businesses and rural telephone companies remains the best mechanism to fulfill the mandate of the Omnibus Budget Reconciliation Act of 1993. This is the only plan that ensures effective and continuing participation in PCS by designated entities. Financial remedies, such as bidding credits, are useful but limited tools that address the bidding process but do not take into account the competitive environment going forward. A set-aside, on the other hand, is narrowly tailored and sufficiently comprehensive to satisfy Congress' intent. A set-aside is constitutionally sound because of the record evidence of exclusion of designated entities in the telecommunications industry. Most importantly, a set-aside applied to all designated entities would not be subject to challenge at all because it would not be based exclusively on race or gender.

*If, however, a set-aside spectrum block is not adopted, the Commission should establish an "entrepreneurial band" allocation with a percent bidding discount for designated entities.* The most dominant companies in the United States could bid on two of the three 30 MHz PCS blocks now contemplated, and new entrants that are not dominant could bid on the third 30 MHz block. Within the entrepreneurial band, all designated entities would be entitled to (1) a bidding discount and (2) installment payments; in addition, minorities and women would be entitled to (3) tax certificates.

- An entrepreneurial band allocation would create a post-auction environment conducive to the long-term viability of designated entities. A nationwide band populated largely by new entrants increases the likelihood of reaching quick agreements on standards and interoperability because new entrants will have the greatest need to speed introduction of PCS to consumers. An entrepreneurial band allocation also addresses the broad policy goal of fostering greater competition while stimulating new and greater infrastructure investment.
- "Dominant" companies could be defined narrowly as companies with more than \$100 million in annual revenues. For purposes of attribution, any entity with a greater than 20 percent ownership interest would be considered an affiliate, with its annual revenues attributed to the bidder.
- This proposal is supported by the record and by Commission precedent. The Commission properly has segregated in-region cellular entities into certain blocks of spectrum for competitive concerns, and proposed to segregate local exchange carriers into a single block of spectrum as well. In addition, other companies — notably MCI — provided compelling justification for creating blocks in which dominant companies would not bid. See Petition for Reconsideration of MCI, Gen. Docket 90-314 (Dec. 8, 1993). Other wireless

industries have adopted similar solutions. In cellular, dominant in-region wireline carriers were granted a set-aside of one of two available spectrum blocks and restricted from acquiring the second; in SMR, dominant local exchange carriers were prohibited from entry. In both cases, a more vibrant and competitive industry resulted.

- If an entrepreneurial block is not established, a much higher bidding credit would be necessary to permit designated entities to have a fair opportunity to bid. As Congressman Mfume pointed out at his May 20, 1994 hearing and as our research demonstrates, a bidding credit of some 72 percent would be necessary for designated entities to overcome just the cost-of-capital advantages of large, dominant telecommunications companies. See Attachment.
- An entrepreneurial band provides a good balance between Congress' clear mandate to provide opportunities for designated entities and avoid undue concentration of PCS licenses on the one hand with the goal of capturing the value of allocated spectrum for the American public on the other. The entrepreneurial band itself would spur investment in designated entities and increase their ability to compete against one another (and others) to bring bids to a market level. Competition between the dominant telecommunications companies for two (rather than three) licenses will maximize the amount of revenue that will be obtained by the government.

Establishment of an "entrepreneurial band," with bidding credits and installment payments for designated entities, will provide meaningful opportunities for historically disadvantaged groups, ensure a vibrant and competitive PCS marketplace, and preserve the potential for auctions to capture the economic benefit of PCS spectrum for the American public.

COLUMBIA PCS, INC.